BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RON SANDERS	)	
Claimant	)	
	)	
VS.	)	
	)	
ASPLUNDH TREE EXPERT COMPANY	)	
Respondent	)	Docket No. 1,036,514
	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent requests review of the January 7, 2009 preliminary hearing Order entered by Administrative Law Judge Rebecca Sanders.

ISSUES

The Administrative Law Judge (ALJ) found that the claimant's symptoms that occurred on August 7, 2007 and eventually lead to his hospitalization, constituted an accident that arose out of and in the course of his employment. The ALJ ordered respondent to pay claimant's medical expenses incurred in connection with his hospitalization.[1] But denied claimant's request for any additional medical treatment as there was no evidence the claimant has any ongoing conditions or symptoms related to the incident.[2]

The respondent requests review of this decision and alleges a number of errors. Respondent contends the claimant failed to establish that he sustained a compensable

[1] ALJ Order (Jan. 7, 2009) at 1.

[2] *Id.* at 3.

injury on August 7, 2007 and likewise failed to prove a causal link between the medical bills presented at the hearing and his alleged job-related injury.

Claimant argues that the Order should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

Claimant was employed as a working supervisor for a tree trimming company and was assigned to work in Manhattan, Kansas clearing tree-covered ground. On August 7, 2007, it was 104 degrees and according to claimant, the heat index was 114 degrees. Claimant was wearing a t-shirt, hard hat, chaps and jeans and was operating a chainsaw.[3] At about 3:00 p.m., claimant began to notice that he was dizzy and lightheaded. He also began to sweat profusely. In spite of working outside on a daily basis and his history of high blood pressure, claimant had not had such symptoms before this day.

He told a co-worker of his symptoms and the two of them stopped working, sat in the truck and drank water. Claimant returned to work, but his symptoms did not subside and by 4:30 -5:00 p.m. claimant decided he could work no more. He asked his co-worker to take him to the hospital.

At the emergency room in Manhattan, he was told he was suffering from heat stroke. He was given fluids and underwent a battery of tests, eventually including a myocardial perfusion imaging scan, a cardiac enzyme evaluation, a pulmonary evaluation, and a nuclear stress test. He was discharged to Kansas Medical Center in Wichita, via an ambulance. He was discharged from the Kansas Medical Center, with a diagnosis of "near syncope secondary to dehydration and hypotension and acute coronary syndrome secondary to hypotension.[4]

Claimant testified that he filed a workers compensation claim and was fired, with no specific explanation why. Claimant indicated the firing came 6 days after his accident. Claimant then applied for unemployment, which respondent challenged.

Claimant admits to having high blood pressure for the last 20 years[5], and that he failed a DOT examination due to his hypertension. He further acknowledges his sleep apnea. While claimant has experienced no further problems with his health and is only

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[3] P.H. Trans. at 6.

[4] *Id.*, Cl. Ex. 1 at 4 (Discharge Summary at 2 dated Aug. 8, 2007).

[5] Claimant's Depo. at 15.

asking for respondent to pay the medical bills incurred as a result of his hospitalization, he does think that it would be "great" to see an expert to ensure he had no permanent damage.[6]

The medical records do not expressly reference "heat stroke" But these records do refer to claimant's work activities outside and expressly indicates the causal connection between claimant's symptoms and dehydration.[7]

In order for a claimant to collect workers compensation benefits he must suffer an accidental injury that arose out of and in the course of his employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.[8]

The ALJ concluded that claimant's dehydration episode constituted an accident that arose out of and in the course of his employment. Respondent stridently disputes this finding, pointing to the medical records and the lack of an expert opinion that claimant suffered from heat stroke as justification for its denial of responsibility. Respondent argues that claimant's need for emergency treatment is attributable to "what appear to be preexisting conditions", namely hypertension.[9]

While it is true that the medical records do not contain a clear and unambiguous statement as to the cause of claimant's symptoms, the record nevertheless establishes a connection between claimant's symptoms and his work activities. Claimant testified that he was working outside under extreme heat conditions, using a chainsaw. He drank some fluids but did not have enough to keep himself hydrated and alleviate his symptoms. Upon presentation to the hospital, he was diagnosed with conditions that were *secondary to dehydration*. Based upon the evidence in the record, it is more likely than not that claimant's outdoor work activities under those conditions gave rise to his dehydration. The fact that no physician expressly endorsed that opinion is not fatal to claimant's claim, at least based upon this record. Moreover, claimant testified that he believed he was

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[6] P.H. Trans. at 11.

[7] The claimant's diagnoses was "near syncope" and "hypotension" both secondary to dehydration.

[8] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

[9] Respondent's Brief at 2 (filed Feb. 2, 2009).

suffering from heat stroke. The claimant's testimony alone is sufficient evidence of his physical condition.[10]

Respondent also argues that claimant failed to establish that the medical bills were related to his alleged accident versus his hypertension. Put another way, "[t]he bills which the Judge ordered paid are not related to the condition which claimant claims is work related, but appear to be related to preexisting medical conditions."[11] This argument was not presented to the ALJ. In fact, respondent lodged no objection to these bills or any of the medical records when they were presented at the preliminary hearing.[12] Accordingly, the Board will not consider this argument for purposes of this appeal.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.[13] Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Rebecca Sanders dated January 7, 2009, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March 2009.

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JULIE A.N. SAMPLE
BOARD MEMBER

c: Robert L. Feldt, Attorney for Claimant
James K. Blickan, Attorney for Respondent and its Insurance Carrier
Rebecca Sanders, Administrative Law Judge

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[10] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001).

[11] Respondent's Brief at 3 (filed Feb. 2, 2009).

[12] P.H. Trans. at 20.

[13] K.S.A. 44-534a.